

§ 440.17

documents necessary to demonstrate compliance with this part.

(f) In the event the licensee or permittee demonstrates financial responsibility using means other than insurance, as provided under § 440.9(f), the licensee or permittee must provide proof that it has met the requirements of this part and of a FAA issued license or permit order.

§ 440.17 Reciprocal waiver of claims requirements.

(a) As a condition of each license or permit, the licensee or permittee must comply with the reciprocal waiver of claims requirements of this section.

(b) The licensee or permittee shall implement a reciprocal waiver of claims with each of its contractors and subcontractors, each customer and each of the customer's contractors and subcontractors, under which each party waives and releases claims against all the other parties to the waiver and agrees to assume financial responsibility for property damage it sustains and for bodily injury or property damage sustained by its own employees, and to hold harmless and indemnify each other from bodily injury or property damage sustained by its employees, resulting from a licensed or permitted activity, regardless of fault.

(c) For each licensed or permitted activity in which the U.S. Government, any agency, or its contractors and subcontractors is involved or where property insurance is required under § 440.9(d), the Federal Aviation Administration of the Department of Transportation, the licensee or permittee, and its customer shall enter into a three-party reciprocal waiver of claims agreement. The three-party reciprocal waiver of claims shall be in the form set forth in Appendix B of this part, for licensed activity, or Appendix C of this part, for permitted activity, of this part or in a form that satisfies the requirements.

(d) The licensee or permittee, its customer, and the Federal Aviation Administration of the Department of Transportation on behalf of the United States and its agencies but only to the extent provided in legislation, must agree in any waiver of claims agreement required under this part to in-

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demnify another party to the agreement from claims by the indemnifying party's contractors and subcontractors arising out of the indemnifying party's failure to implement properly the waiver requirement.

(e) For each licensed or permitted activity in which the U.S. Government, any of its agencies, or its contractors and subcontractors are involved, the Federal Aviation Administration of the Department of Transportation and each space flight participant shall enter into or have in place a reciprocal waiver of claims agreement in the form of the agreement in Appendix E of this part or that satisfies its requirements.

(f) For each licensed or permitted activity in which the U.S. Government, any of its agencies, or its contractors and subcontractors is involved, the Federal Aviation Administration of the Department of Transportation and each crew member shall enter into or have in place a reciprocal waiver of claims agreement in the form of the agreement in Appendix D of this part or that satisfies its requirements.

§ 440.19 United States payment of excess third-party liability claims.

(a) The United States pays successful covered claims (including reasonable expenses of litigation or settlement) of a third party against a licensee, a customer, and the contractors and subcontractors of the licensee and the customer, and the employees of each involved in licensed activities, and the contractors and subcontractors of the United States and its agencies, and their employees, involved in licensed activities to the extent provided in an appropriation law or other legislative authority providing for payment of claims in accordance with 49 U.S.C. 70113, and to the extent the total amount of such covered claims arising out of any particular launch or re-entry:

(1) Exceeds the amount of insurance required under § 440.9(b); and

(2) Is not more than \$1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above that amount.

(b) Payment by the United States under paragraph (a) of this section shall not be made for any part of such

claims for which bodily injury or property damage results from willful misconduct by the party seeking payment.

(c) The United States shall provide for payment of claims by third parties for bodily injury or property damage that are payable under 49 U.S.C. 70113 and not covered by required insurance under §440.9(b), without regard to the limitation under paragraph (a)(1) of this section, because of an insurance policy exclusion that is usual. A policy exclusion is considered usual only if insurance covering the excluded risk is not commercially available at reasonable rates. The licensee must submit a certification in accordance with §440.15(c)(1)(iii) of this part for the United States to cover the claims.

(d) Upon the expiration of the policy period prescribed in accordance with §440.11(a), the United States shall provide for payment of claims that are payable under 49 U.S.C. 70113 from the first dollar of loss up to \$1,500,000,000 (as adjusted for inflation occurring after January 1, 1989).

(e) Payment by the United States of excess third-party claims under 49 U.S.C. 70113 shall be subject to:

(1) Prompt notice by the licensee to the FAA that the total amount of claims arising out of licensed activities exceeds, or is likely to exceed, the required amount of financial responsibility. For each claim, the notice must specify the nature, cause, and amount of the claim or lawsuit associated with the claim, and the party or parties who may otherwise be liable for payment of the claim;

(2) Participation or assistance in the defense of the claim or lawsuit by the United States, at its election;

(3) Approval by the FAA of any settlement, or part of a settlement, to be paid by the United States; and

(4) Approval by Congress of a compensation plan prepared by the FAA and submitted by the President.

(f) The FAA will:

(1) Prepare a compensation plan outlining the total amount of claims and meeting the requirements set forth in 49 U.S.C. 70113;

(2) Recommend sources of funds to pay the claims; and

(3) Propose legislation as required to implement the plan.

(g) The FAA may withhold payment of a claim if it finds that the amount is unreasonable, unless it is the final order of a court that has jurisdiction over the matter.

APPENDIX A TO PART 440—INFORMATION REQUIREMENTS FOR OBTAINING A MAXIMUM PROBABLE LOSS DETERMINATION FOR LICENSED OR PERMITTED ACTIVITIES

Any person requesting a maximum probable loss determination shall submit the following information to the FAA, unless the FAA has waived a particular information requirement under 14 CFR 440.7(c):

Part 1: Information Requirements for Licensed Launch, Including Suborbital Launch

I. GENERAL INFORMATION

A. Mission description.

1. A description of mission parameters, including:

- a. Launch trajectory;
- b. Orbital inclination; and
- c. Orbit altitudes (apogee and perigee).

2. Flight sequence.

3. Staging events and the time for each event.

4. Impact locations.

5. Identification of the launch site facility, including the launch complex on the site, planned date of launch, and launch windows.

6. If the applicant has previously been issued a license or permit to conduct activities using the same vehicle from the same launch site, a description of any differences planned in the conduct of proposed activities.

B. Launch vehicle description.

1. General description of the launch vehicle and its stages, including dimensions.

2. Description of major systems, including safety systems.

3. Description of rocket motors and type of fuel used.

4. Identification of all propellants to be used and their hazard classification under the Hazardous Materials Table, 49 CFR 172.101.

5. Description of hazardous components.

C. Payload.

1. General description of the payload, including type (e.g., telecommunications, remote sensing), propellants, and hazardous components or materials, such as toxic or radioactive substances.

D. Flight safety system.

1. Identification of any flight safety system on the vehicle, including a description of operations and component location on the vehicle.